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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Marina Shereshevsky      Group Art Unit: 1761  
Serial No.: 10/820,488      Examiner: N/A  
Filed: April 8, 2004  
For: **"READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF"**  
Atty. Docket No.: 0162-1

Bedminster, NJ 07921  
August 30, 2004

Commissioner for Patents  
Alexandria, VA 22313-1450

Sir:

**PETITION TO MAKE SPECIAL FOR NEW APPLICATION**  
**UNDER M.P.E.P. § 708.02 (VIII)**

Applicant hereby petitions to make special this new application. The application has not yet been examined by the United States Patent and Trademark Office (the "Office").

Applicant submits that all of the claims in this case are directed to a single invention. As a prerequisite to the grant of special status, if the Office determines that all claims presented are not obviously directed to a single invention, then applicant will make an election, without traverse.

A pre-examination search of the subject matter encompassed by the above-identified application has been made by a professional searcher. The pre-examination search was conducted in the United States Patent and Trademark Office. The field of search covered Class 426, subclasses 34, 43, 52, 583, and 634. Additionally, a computer database search was conducted on the USPTO system EAST and the European Patent Office system ESP@CENET. Examiner Helen Pratt in Class 426 (Art Unit 1761) was consulted in confirming the field of search. The references developed by the pre-examination search were cited in applicant's Information Disclosure Statement dated June 22, 2004. A statement pertaining to the pre-examination search listing the

09/02/2004 WABDELRL3 00000004 10820488

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09/02/2004 WABDELRL1 00000013 10820488

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PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

Page 2 of 2

references deemed most closely related to the subject matter encompassed by the claims is submitted herewith.

Applicant also submits herewith a detailed discussion of the references, which discussion particularly points out how the claimed subject matter is distinguishable over the references.

Enclosed herewith is a check in the amount of \$130, to cover the fee for this Petition. In the event that any additional fee is deemed to be required by 37 C.F.R. 1.17(h), it is requested that applicants be contacted at (908) 201-0220 and provided an opportunity to effect payment thereof.

A duplicate of this petition is attached.

Respectfully submitted,  
Marina Shereshevsky



By \_\_\_\_\_  
Ernest D. Buff  
(Her Attorney)  
Reg. No. 25,833  
(908) 201-0220



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**STATEMENT PERTAINING TO PRE-EXAMINATION SEARCH**  
**IN ACCORDANCE WITH MPEP § 708.02(VIII)**

In accordance with MPEP § 708.02 (VIII), applicant, by and through her attorney, hereby submits that a pre-examination search was made for the above-identified application. The search was conducted by applicant's agents at the United States Patent and Trademark Office. The field of search covered Class 426, subclasses 34, 43, 52, 583, and 634. Additionally, a computer database search was conducted on the USPTO system EAST and the European Patent Office system ESP@CENET. Examiner Helen Pratt in Class 426 (Art Unit 1761) was consulted in confirming the field of search. The references developed by the pre-examination search were cited in applicant's Information Disclosure Statement dated June 22, 2004.

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For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

Page 2 of 3

The search identified the following U. S. Patent Documents, Foreign Patent Documents, and Internet Documents:

#### **UNITED STATES PATENT DOCUMENTS**

Ref. #	Patent No.	Inventor(s)
1	5,143,742	Maroudas
2	5,256,438	Lewis et al.
3	6,488,973 B1	Wright
4	2001/0024669 A1	Zuccato
5	2002/0160060 A1	Kim Chen et al.
6	2003/0091694 A1	Remo

#### **FOREIGN PATENT DOCUMENTS**

Ref. #	Patent No.	Inventor(s)
7	EP 0002037	Stussi
8	EP 0655202	Giani et al.
9	GB 2294625	Oliver
10	JP 3112454	Imaizumi Masahiro
11	JP 55007013	Yotsuhashi Kazutada

#### **INTERNET DOCUMENTS**

Ref. #	Author, Title, Date, Pertinent Pages, etc.
12	Teri's Kitchen, "Tangy Yogurt Dip With Vegetable Crudités", <a href="http://teriskitchen.com/appetize/yogurtdip-a.html">http://teriskitchen.com/appetize/yogurtdip-a.html</a>
13	Good Food Good Health, <i>American Institute for Cancer Research</i> , "Creative With Thanksgiving Day Tide-Me-Overs", <a href="http://www.cookwithaloha.com/beandip.htm">http://www.cookwithaloha.com/beandip.htm</a>
14	Chef2Chef Culinary Portal, "Vegetables In Yogurt Sauce", <a href="http://recipes.chef2chef.net/recipe-archive/52/276005.shtml">http://recipes.chef2chef.net/recipe-archive/52/276005.shtml</a>
15	Sweet Baby Media, "Curried Croquettes", <a href="http://www.sweetbabymedia.com/recipes/allbynumber4/017415.shtml">http://www.sweetbabymedia.com/recipes/allbynumber4/017415.shtml</a>
16	Mangels, Reed et al., DAILYVEG, "Nutrition in Childhood", <a href="http://dailyveg.com/other/childhood.php">http://dailyveg.com/other/childhood.php</a>

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

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YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

Page 3 of 3

Each of the foregoing references have been identified and discussed in the Detailed  
Discussion of the References Submitted in Compliance with MPEP § 708.02(VIII).

Respectfully submitted,  
Marina Shereshevsky

  
By \_\_\_\_\_

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(Her Attorney)  
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**DETAILED DISCUSSION OF THE REFERENCES SUBMITTED  
WITH THE INFORMATION DISCLOSURE STATEMENT  
IN COMPLIANCE WITH MPEP § 708.02 (VIII)**

In accordance with MPEP § 708.02(VIII), applicant hereby submits a detailed discussion of references applicable to the above-identified application. Each of these references was listed in the Information Disclosure Statement filed with the United States Patent and Trademark Office on June 22, 2004, in connection with the above-identified application.

1. U. S. Patent No. 5,143,742 to Maroudas

U.S. Patent No. 5,143,742 to Maroudas (hereinafter the "742 patent") discloses a process for the production of a food product usable as a bread spread, creamy food, and / or a base material for the production of food products consisting predominantly of milk protein, unsaturated vegetable oil and water. The process for the production of the food product employs the dehydration of curds,

In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
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For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
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Atty. Docket No.: 0162-1

yogurt, or other milk protein in flocculent form, reducing the weight by 50% to 85%, preferably 50% to 70%. Following dehydration, 4 to 40% by weight unsaturated vegetable oil is added, and the mixture is stirred at room temperature. The process yields a soft, creamy product with a solid consistency similar to that of butter or margarine, and has a neutral taste. The patent further discloses that additives may be added, including pulverized dried, raw, or cooked vegetables.

Significantly, the '742 patent provides for the dehydration of yogurt, removing water until the weight is reduced from 50 to 85 percent. Following dehydration the '742 patent provides for the addition of unsaturated vegetable oil and, optionally, the addition of pulverized vegetables. The resulting food product is an emulsified food product, comprised primarily of dehydrated yogurt and unsaturated vegetable oil (4 to 40% by weight). Notably, the dehydration of the curds, yogurt, or other flocculated milk protein, changes the chemical properties by increasing the concentration of various elements and changing the overall consistency. As a result, the food product disclosed by the '742 patent is suitable as a bread spread, creamy food, or as a base material for other food products but, is generally not suitable as a snack or meal as a typical yogurt.

Unlike the spread or base material food product disclosed by the '742 patent, applicant's claims 1 – 18 define a ready to eat vegetable yogurt food product and process for making the same. Specifically, the ready to eat vegetable yogurt recited by applicant's claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. In accordance with applicant's claims 1 – 18, the vegetables, plain yogurt, and natural additives are blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt recited by applicant's claims 1 – 18 is stored at refrigeration temperatures, wherein the

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

cooked pureed vegetables remain unfermented, and are readily consumed without further preparation. Applicant's claimed ready to eat vegetable yogurt food product is comprised of all natural ingredients, none of which undergo dehydration. Furthermore, the food product and process thereof defined by applicant's claims 1 – 18 does not contain nor utilize unsaturated vegetable oil. The addition of such oils, as called for by the '742 patent, ultimately effects the overall taste, texture, and nutritional value associated with the food product. Clearly, the ready to eat vegetable yogurt defined by applicant's claims 1-18 is not disclosed nor suggested by the '742 patent.

These structural differences patentably distinguish the invention called for by applicant's claims 1 – 18 from the '742 patent disclosure.

2. U. S. Patent No. 5,256,438 to Lewis et al.

US Patent 5,256,438 to Lewis et al. (hereinafter the "'438 patent'") discloses ready-to-eat, preserved fruit products that are dehydrated to a soluble solid level of 40% to 60%, a moisture level of 35% to 55% and a water activity level of 0.75 to 0.90. The object of the invention is to provide a natural edible fruit product which will not freeze at temperatures ranging from 0° C to -25° C, more particularly -15° C to -25° C, preferably about -20° C. The '438 patent further discloses processes for producing the preserved fruit products and foods containing the fruit products.

Specifically, the '438 patent teaches that the preserved, "non-freeze", fruit products can be used as additives to yogurts, ice creams, and frozen deserts. The fruit preserves are prepared through the removal of water, optionally after blanching, dehydrating at least 20% to about 50% of their original weight effective to reach a final sugar solid content of about 50% by weight.



In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
Filed: April 8, 2004  
For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF  
Atty. Docket No.: 0162-1

On the other hand, applicant's claims 1 – 18 define a ready to eat vegetable yogurt food product and process for making the same, comprising cooked pureed vegetables homogeneously blended in plain yogurt. Applicant's claimed ready to eat vegetable yogurt also contains additives for adjusting the yogurt to the desired taste. Unlike the '438 patent, the ready to eat vegetable yogurt defined by applicant's claims 1 – 18 does not call for the dehydration of the vegetables, nor is applicant's claimed vegetable yogurt a non-freeze preserved product capable of withstanding extreme temperatures. In fact, applicant's claimed ready to eat vegetable yogurt comprises all natural products and, as such, it must be consumed within certain stability related time periods (i.e. before fermentation of the vegetables contained therewithin).

More specifically, the '438 patent calls for the dehydration of fruit. Such a dehydration process operates to increasing the sugar to solids ratio of the fruit. The overall sweetness of the dried fruit is increased, and the composition and taste of the fruit are markedly different. On the other hand, the vegetables used in the applicant's manufacturing process and vegetable yogurt food product produced therefrom, as delineated by applicant's claims 1 – 18, are not dehydrated. Accordingly, the ready to eat vegetable yogurt defined by applicant's claims 1 – 18 has a vastly different composition, taste, texture, and nutritional makeup than the food product disclosed by the '438 patent. Advantageously, the vegetable yogurt recited by applicant's claims 1 – 18 is not only nutritional, but is easily made with the minimum of basic culinary utensils.

In view of these structural and procedural differences, the invention delineated by claims 1 – 18 patentably differentiates the '438 patent disclosure.

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
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PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

3. U. S. Patent No. 6,488,973 to Wright

US Patent 6,488,973 to Wright (hereinafter the '973 patent) discloses a cooking pouch that contains a frozen food product. Such product comprises a raw protein portion, a raw or partially cooked or blanched vegetable portion, and a sauce. The raw protein portion preferably consists of fish, beef, or poultry.

The '973 patent discloses the sauce utilized can include at least one of the following ingredients: garlic butter, pecan butter, lemon dill, meuniere, etoufee, etoufee with shrimp and/ or dijon garlic. The '973 patent does not clearly indicate that the sauce can include milk protein base (i.e. yogurt) or soy yogurt as an ingredient. Furthermore, the food product provided by the '973 patent is frozen and must be subjected to heat before eating, and is not therefore suitable for immediate consumption. Upon subjection to heat the protein and vegetables portions located in the '973 patent's pouch cooks and becomes edible. In order to facilitate the cooking process, the vegetables in the pouch are partially cooked, so that the time remaining to complete cooking of the vegetables is approximately the same as the time required to cook the raw protein portion. Moreover, the food product disclosed by the '973 patent is not homogeneously mixed, but rather remains a heterogeneous mixture with the protein portion and vegetables remaining in tact (i.e. not puréed to a smooth texture).

In contrast, the ready to eat vegetable yogurt recited by applicant's claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. Applicant's claims 1 – 18 delineate that the vegetables, plain yogurt, and natural additives are

In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
Filed: April 8, 2004  
For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF  
Atty. Docket No.: 0162-1

blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt recited by applicant's claims 1 – 18 is stored at refrigeration temperatures, wherein the cooked pureed vegetables remain unfermented, and is readily consumed without further preparation. This is not permitted by the '973 patent teaching, which requires a further cooking step following preparation of the disclosed cooking pouch.

Furthermore, the food product and process defined by applicant's claims 1 – 18 does not contain a protein portion (fish, beef, poultry, pork, or veal), but is purely vegetarian in nature. The addition of a protein portion, as called for by the '973 patent, ultimately effects the overall taste, texture, and nutritional value associated with the food product. Clearly, the ready to eat vegetable yogurt defined by applicant's claims 1-18 is not disclosed nor suggested by the '973 patent.

In view of these structural and procedural differences, claims 1 – 18 patentably differentiate the '973 patent disclosure.

4. U. S. Patent Application Publication No. 2001/0024669 to Zuccato

US Patent Application Publication No. 2001/0024669 to Zuccato (hereinafter the "'669 publication'") discloses a process for the production of a vegetable yogurt and the vegetable yogurt product produced from that process. The process utilizes the fermentation of vegetable products under the action of lactic bacteria in the formation of a vegetable yogurt.

Significantly, the process disclosed in the '669 publication uses a vegetable starting material made up of a plurality of vegetable substances of different vegetable species. These various vegetable substances are mixed in different ratios. The mixture is then ground and a dense liquid is

In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
Filed: April 8, 2004  
For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF  
Atty. Docket No.: 0162-1

extracted from the mixture. After grinding, water is added in variable amounts according to the type of vegetables used. There is then added thereto suitable ratios of different typologies of fruit and / or green vegetables in order to adjust the sugar concentration and pH values of the vegetable mixture. The sugar concentration and pH values are determined based on a range conducive to the development of lactic bacteria. The mixture is thereafter inoculated with either mesophile microorganisms or microbich species to produce the vegetable yogurt disclosed by the '669 publication.

The process and product disclosed by the '669 publication provides for the formation of a vegetable yogurt that is derived from the vegetables themselves through direct fermentation of the vegetables. Contrary to the vegetable yogurt process and product disclosed in the '669 publication, the vegetables utilized in the ready to eat vegetable yogurt delineated by applicant's claims 1 – 18 are not fermented. In fact, applicant's claims recite a ready to eat vegetable yogurt that comprises all natural products and must be stored at refrigeration temperatures specifically to avoid the fermentation of the cooked pureed vegetables therein.

Clearly, the properties exhibited by the food product of the '669 publication differ significantly from those inherent in the ready to eat vegetable yogurt recited by applicant's claims 1 – 18. Fermentation of the vegetables via the '669 publication, causes a chemical change therein by way of an enzymatic transformation of organic substrates. This chemical change decreases the overall nutritional properties of the vegetable. On the other hand, the vegetables used in the ready to eat vegetable yogurt recited by applicant's claims 1 – 18 do not undergo any such chemical processes, and the vegetables retain their natural chemical make-up and nutritional values.

In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
Filed: April 8, 2004  
For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF  
Atty. Docket No.: 0162-1

Advantageously, the applicant's claimed vegetable yogurt is readily made quickly and conveniently with the minimum of culinary utensils and can be immediately consumed without extensive wait time after preparation.

In view of these structural and procedural differences, the invention delineated by claims 1 – 18 patentably differentiates the '669 publication disclosure.

5. U. S. Patent Application Publication No. 2002/0160060 to Kim Chen et al.

US Patent Application Publication No. 2002/0160060 to Kim Chen et al. (hereinafter the "'060 publication") discloses a food product in the form of a bread spread that contains phytoestrogens. Also disclosed is a method for producing the bread spreads. The '060 publication seeks to set forth a way to introduce phytoestrogens into one's diet by incorporating the estrogen into a food product, such as a bread spread, and thereby avoiding the necessity of taking the estrogen like compound via pharmaceutical pill form.

Specifically, the '060 publication discloses a process for incorporating phytoestrogens in the diet by way of a water-in-oil spread. The phytoestrogen food product process in the '060 publication comprises the steps of extracting the phytoestrogens from the food source, preparing a spread by combining a fat phase with an aqueous phase, and adding the phytoestrogens and other additives to the resulting emulsion. The phytoestrogen product comprises a fat (i.e. preferably triglyceride fat derived from vegetable sources), water, gelling agent, additives, and phytoestrogens.

The '060 publication calls for the emulsification of a fat and aqueous phase, followed by the addition of various additives and phytoestrogens. The resulting food product consists of an

In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
Filed: April 8, 2004  
For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF  
Atty. Docket No.: 0162-1

emulsified food product, and is suitable as a bread spread, but is not directly ingested as a typical yogurt would be. Rather, it exhibits a solid, butter-like texture. Moreover, there are no vegetables directly added to the '060 publication food product, rather the lignan phytoestrogen is merely extracted from the vegetables and added. The vegetables themselves are not added to the emulsion. As a result, the bulk of the nutritional value of the vegetable is not added to the food product; just the extracted phytoestrogen is added.

By way of distinction, the ready to eat vegetable yogurt recited by applicant's claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. Applicant's claims 1 – 18 delineate that the vegetables, plain yogurt, and natural additives are blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt recited by applicant's claims 1 – 18 is stored at refrigeration temperatures, wherein the cooked pureed vegetables remain unfermented, and is readily consumed without further preparation.

The process and food product recited by applicant's claims 1 – 18 does not implement the addition of fats and oils, but rather utilizes a plain yogurt and cooked, puréed, vegetables. On the other hand, the '060 publication does not call for the addition of vegetables, but merely the addition of phytoestrogens extracted from a vegetable source. Thus, the ready to eat vegetable yogurt defined by applicant's claims 1 – 18 has a completely different nutritional make-up than the food product disclosed in the '060 publication.

These structural and procedural differences provide ample basis for predicated patentability of present claims 1 – 18 over the '060 publication disclosure.

In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
Filed: April 8, 2004  
For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF  
Atty. Docket No.: 0162-1

6. U. S. Patent Application Publication No. 2003/0091694 to Remo

US Patent Application Publication No. 2003/0091694 to Remo (hereinafter the “‘694 publication”) discloses a process for the production of a vegetable yogurt formed by the fermentation of vegetable products, such as green vegetables and fruits, under the action of lactic acid bacteria. Firstly, the green vegetables and /or fruit are homogenized; water is added to obtain a creamy liquid product, which is then pasteurized. Afterwards the cultures of lactic acid bacteria are inoculated, whereby the fermentation step is carried out at a temperature dependant on the strain of lactic acid bacteria used until the pH reaches a value of about 3.8 to 4.5. At that point fragrances and / or thickening agents, fruit purée, or fruit in small pieces are added and the product is packaged.

Significantly, the process disclosed by the ‘694 publication calls for the formation of a vegetable yogurt derived from the vegetables themselves through fermentation of the vegetables. Contrary to the ready to eat vegetable yogurt recited by applicant’s claims 1 – 18 in which the vegetables are do not undergo fermentation, and in fact fermentation is purposely avoided. Fermentation of the vegetables described by the ‘694 publication causes a chemical change in the vegetable by way of an enzymatic transformation of organic substrates. This chemical change decreases the overall nutritional properties of the vegetable. Starkly to the contrary, the vegetables yogurt recited by applicant’s claims 1 – 18 does not involve the fermentation of the vegetable, nor any other processes which can vastly effect the character of the vegetable.

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

Clearly, the properties exhibited by the food product of the '694 publication differ significantly from those inherent in the ready to eat vegetable yogurt recited by applicant's claims 1 – 18. Advantageously, applicant's claimed vegetable yogurt is readily made quickly and conveniently with the minimum of culinary utensils and can be immediately consumed without extensive wait time after preparation. On the other hand, the '694 patent process requires fermentation techniques, pH adjustment techniques, and cultivation techniques. Moreover, the vegetable yogurt recited by applicant's claims 1 – 18 retains the nutritional values innate to fresh vegetables, yielding a delicious, completely natural source of vitamins.

These structural and procedural differences patentably differentiate applicant's claims 1 – 18 from the '694 publication disclosure.

#### 7. European Patent No. EP 0002037 to Stussi

European Patent No. EP 0002037 to Stussi (hereinafter the "'037 EP patent'") discloses a method for filling containers with 'sundae-style' yogurt including the steps of placing a transparent lid over the top of a container, and providing an opening in the bottom of the closed, empty container. The container is then inverted and a layer of fruit fraction is added to the container to form a layer of fruit preserves, and the remainder of the container is filled with a bacteriologically inoculated, gum stabilized liquid milk fraction. The container is then sealed and incubated so that fermentation of the liquid milk fraction produces yogurt, followed by refrigeration.

In an optional embodiment disclosed by the '037 EP patent the container is in its upright position and the milk fraction is added; after incubation the yogurt is produced and a layer of fruit



In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

preserves is added to the top surface of the yogurt, which has sufficient gel strength to support the fruit layer. The method is suited for allowing a technique, which provides a sundae-style yogurt by inhibiting the intermingling of fruit preserves with the yogurt fraction thus yielding a sundae-style yogurt. Another embodiment sets forth a technique for inhibiting intermingling of fruit preserves with the yogurt fraction by providing a water-insoluble, semi-solid edible barrier of hydrogenated animal fat or hydrogenated vegetable oil at the interface between the fruit preserves and the liquid milk or yogurt fraction.

Significantly, the '037 EP patent method is suited for the production of a sundae-style yogurt by preventing the homogenous mixture of the fruit preserve layer with the yogurt fraction. The fruit preserves are not homogeneously mixed with the yogurt and no vegetables are added to the yogurt. Moreover, the method in the '037 EP patent focuses on the inhibition of the fruit preserve mixture and the yogurt in order to form a sundae like treat.

By way of contrast, applicant's claims 1 – 18 delineate a homogeneous mixture of blended pureed vegetables and yogurt that is a ready to eat vegetable yogurt. The ready to eat vegetable yogurt recited by applicant's claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. Applicant's claims 1 – 18 define that the vegetables, plain yogurt, and natural additives are blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt recited by applicant's claims 1 – 18 is stored at refrigeration temperatures, wherein the cooked pureed vegetables remain unfermented, and is readily consumed without further preparation.

In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
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YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF  
Atty. Docket No.: 0162-1

These structural and procedural differences patentably distinguish the invention delineated by applicant's claims 1 – 18 from the '037 EP patent disclosure.

8. European Patent No. EP 0655202 to Giani et al.

European Patent No. EP 0655202 to Giani et al. (hereinafter the "'202 EP patent'") discloses a yogurt including components having healthy functions. The '202 EP patent comprises a food product made from a lean yogurt, sugared by 9.4% saccharose. The process further comprises the steps of adding mash, fruit juices, and natural vegetable extracts to the yogurt. The vegetable extracts are obtained by first extracting the juice from the vegetable raw materials through extraction methods (i.e. such as evaporation). Secondly, the extracted materials are then subject to thermal processing in order to concentrate the extracted juices to a higher potency. The patent also discloses yogurts that have tonic properties, including a bilberry and ginseng yogurt, a passiflore and chamomile yogurt, and a plum mash and strawberry with rhubarb yogurt.

Significantly, the '202 EP patent calls for the extraction of juice from raw vegetables, followed by concentration of the extract. Although extraction of the juice from a vegetable does yield some of the nutritional character of the vegetable, there are certain nutritional characteristics which cannot be obtained purely through extraction. For instance, some nutritional value is inherent in the skin or pulp of the vegetable. Generally, the consumption of vegetable as a whole yields greater nutritional benefits than that obtained from merely consuming the vegetable's extracted juices. Furthermore, the '202 EP patent discloses thermally heating the juice extract in

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

order to concentrate the juice extract. Such treatment via thermal processes has the tendency to decompose various heat-unstable nutrients and vitamins in the vegetable's extract.

On the other hand, the food product defined by applicant's claims 1 – 18 recites a ready to eat vegetable yogurt and process for manufacturing that does not utilize nor require the extraction of the juices from the vegetable. Rather, the ready to eat vegetable yogurt and process defined by applicant's claims 1 – 18 requires that the whole vegetable is added to the yogurt. While the '202 EP patent implicitly calls for discarding the pulp or shell of the vegetable after the juices are extracted, the applicant's claimed ready to eat vegetable yogurt requires the addition of the complete vegetable.

Furthermore, the '202 EP patent provides for thermal treatment of the extracted juices in order to increase the concentration of the juice; such thermal treatment is predisposed to decomposing certain nutrients. The ready to eat vegetable yogurt recited by applicant's claims 1 – 18 does not call for thermal treatment of extracted juices, thereby reducing the likelihood of decomposing certain nutrients. Accordingly, the ready to eat vegetable yogurt defined by applicant's claims 1 – 18 has a vastly different composition, taste, texture, and nutritional makeup than the food product disclosed by the '202 EP patent. Advantageously, the vegetable yogurt recited by applicant's claims 1 – 18 is not only nutritional, but is easily made with the minimum of basic culinary utensils.

These structural and procedural distinctions strongly support patentability of applicant's claims 1 – 18 over the '202 EP patent disclosure.

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

9. Great Britain Patent No. GB 2294625 to Oliver

Great Britain Patent No. GB 2294625 to Oliver (hereinafter the “625 GB patent”) discloses a yogurt comprising rosaceous fruit, preferably one or more of apple, pear, plum and / or damson, and additionally comprising one or more vegetables, herbs, and/or spices. The object of the disclosure is to set forth a vegetable type yogurt including the incorporation of rosaceous fruit to act as preservatives for the yogurt food product.

Specifically, the ‘625 GB patent comprises a roseaceous fruit, a vegetable, and herbs or spices. The yogurt comprises up to 12% by weight of added sugar. The disclosure sets forth that vegetables are to be added and shall comprise one or more of celery, tomato, beetroot, courgette, pepper, marrow, onion, leeks, parsnips, swede, carrots, beans and /or potato. Furthermore, the ‘625 GB patent discloses that the weight percent of the vegetables to be used is within the range of 12 to 20 weight percent, and in particular 16 weight percent.

By way of contrast, the vegetable yogurt and process thereof delineated by applicant’s claims 1 – 18 does not call for nor contain fruit or herbs and / spices. Specifically, the ready to eat vegetable yogurt recited by applicant’s claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. Applicant’s claims 1 – 18 delineate that the vegetables, plain yogurt, and natural additives are blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt recited by applicant’s claims 1 – 18 is stored at refrigeration temperatures, wherein the cooked pureed vegetables remain unfermented, and is readily consumed without further preparation.

In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
Filed: April 8, 2004  
For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF  
Atty. Docket No.: 0162-1

These structural and procedural distinctions provide ample basis upon which to predicate patentability of applicant's claims 1 – 18 over the '625 GB patent disclosure.

10. Japanese Patent No. JP 3112454 to Imaizumi et al.

Japanese Patent No. JP 3112454 to Imaizumi et al. (hereinafter the "454 JP patent") discloses a vegetable yogurt-jelly food product. The process for formulating the food product comprises the mixing of vegetables, yogurt and a gelling agent. The '454 JP patent does not restrict the kinds of vegetable to be used, setting forth that any kind of leaf vegetable, root vegetable, fruit vegetable, stem vegetable, or flower vegetable can be used as the vegetable. The process provides that a conventional plain yogurt can be used as the yogurt. The gelling agent may be carrageenan, agar, gelatin, gellan gum, pectin, canthan gum or a mixture thereof. The purpose of the invention is to suppress the grassy smell of vegetables and improve the taste and flavor by mixing vegetables, yogurt and a gelling agent.

Specifically, the '454 JP patent comprises a vegetable, gelling agent, and yogurt. In contrast, the ready to eat vegetable yogurt and process thereof defined by applicant's claims 1 – 18 does not utilize any type of jelling agent, but is comprised of all natural vegetables and yogurt, such as soy yogurt. We understand that the addition of a gelling agent as set forth by the '454 JP operates to change the overall taste, consistency, and nutritional make-up of the food product. Advantageously, the applicant's claimed vegetable yogurt is convenient to make and requires a minimum of kitchen aids, while the '454 JP patent process requires the addition of gelling agents. Unlike the gelled yogurt taught by the '454 JP patent, the ready to eat vegetable yogurt delineated by applicant's

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

claims 1 -18 retains the nutritional values innate to fresh vegetables, thereby providing a delicious, completely natural source of vitamins. Particularly, the ready to eat vegetable yogurt recited by applicant's claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. Applicant's claims 1 – 18 delineate that the vegetables, plain yogurt, and natural additives are blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt.

In light of these structural and procedural differences, the invention defined by applicant's claims 1 – 18 and the '454 JP patent disclosure are patentably distinct.

11. Japanese Patent No. JP 55007013 to Yotsuhashi

Japanese Patent No. JP 55007013 to Yotsuhashi (hereinafter the "'013 JP patent'") discloses a process and food product. Gelatin, finely cut or ground vegetables, extracts, juices, or cooked vegetables are added to yogurt either before or after fermentation. The object of the process is to prepare a yogurt containing vegetables having softened fermentation odor and improved flavor, by adding vegetables to the yogurt during the preparation step. The vegetables are added to one or both layers of yogurt and a jelly is prepared by using a gelatinizing agent.

Specifically, the '013 JP patent comprises a vegetable, gelling agent, and yogurt with the addition of the vegetable before or after fermentation of the vegetables. The vegetables are added to the yogurt during the yogurt preparation step. A gelatinizing agent is also added to the vegetable yogurt food product. Vegetable fermentation, as required by the '013 JP patent process, results in a food product that exhibits properties significantly different from a food product that does not

In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
Filed: April 8, 2004  
For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF  
Atty. Docket No.: 0162-1

involve vegetable fermentation. Fermentation of the vegetables causes a chemical change in the vegetable by way of an enzymatic transformation of organic substrates. This chemical change alters the overall inherent nutritional properties of the vegetable.

By way of contrast, the ready to eat vegetable yogurt and process thereof defined by applicant's claims 1 – 18 does not utilize fermented vegetables. Specifically, the ready to eat vegetable yogurt recited by applicant's claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. Applicant's claims 1 – 18 delineate that the vegetables, plain yogurt, and natural additives are blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt recited by applicant's claims 1 – 18 is stored at refrigeration temperatures, wherein the cooked pureed vegetables remain unfermented, and is readily consumed without further preparation.

These structural and procedural distinctions provide ample basis upon which to predicate patentability of applicant's claims 1 – 18 over the '013 JP patent disclosure.

12. Reference found at <http://teriskitchen.com/appetize/yogurtdip-a.html> by Teri's Kitchen

Web-literature on Teri's Kitchen entitled "Tangy Yogurt Dip With Vegetable Crudités" found at <http://teriskitchen.com/appetize/yogurtdip-a.html> (hereinafter the "Dip Reference") discloses a vegetable dip recipe comprising the mixing of yogurt with various herbs. Fresh raw or cooked vegetables can then be immersed in the dip and consumed. The dip disclosed in the 'Dip Reference does not itself contain fresh raw or cooked vegetables, but is merely used for dipping such vegetables.

In re application of: Marina Shereshevsky  
Serial No.: 10/820,488  
Filed: April 8, 2004  
For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF  
Atty. Docket No.: 0162-1

On the other hand, the ready to eat vegetable yogurt and process thereof delineated by applicant's claims 1 – 18 calls for the homogeneous mixing of cooked pureed vegetables with plain yogurt. Whereas the 'Dip Reference discloses a means of adding flavor to a vegetable by way of coating the vegetable with the dip agent, the vegetable yogurt and process thereof defined by applicant's claims 1 – 18 requires the complete homogenous mixing of vegetables with plain yogurt. Clearly, the ready to eat vegetable yogurt defined by applicant's claims 1-18 is not disclosed nor suggested by the 'Dip Reference.

Specifically, the ready to eat vegetable yogurt recited by applicant's claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. Applicant's claims 1 – 18 delineate that the vegetables, plain yogurt, and natural additives are blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt recited by applicant's claims 1 – 18 is stored at refrigeration temperatures, wherein the cooked pureed vegetables remain unfermented, and is readily consumed without further preparation.

In light of these structural and procedural differences, the invention recited by applicant's claims 1 – 18 and the 'Dip Reference disclosure are patentably distinct.

13. Reference found at <http://www.cookwithaloha.com/beandip.htm> by Cook With Aloha

Web-literature to Cook with Aloha entitled "Good Food/Good Health: Creative With Thanksgiving Day Tide-Me-Overs" found at <http://www.cookwithaloha.com/beandip.htm> (hereinafter the "'Tide-Me-Overs Reference'") discloses vegetable chips. The 'Tide-Me-Overs



In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

Reference provides vegetable chips made by slicing vegetables (i.e. carrots, beets, or sweet potatoes) paper thin and baking them on an un-greased baking sheet until crisp, then dipping the vegetable chips into a dip. The 'Tide-Me-Overs Reference further discloses that blanched vegetables may be used as dippers for the dip as well, and discloses a recipe for a White Bean Dip. The dip disclosed by the 'Tide-Me-Over Reference contains no yogurt. Furthermore, the dip itself does not contain the fresh raw or cooked vegetables, but is merely used for dipping such vegetables.

By way of contrast, the ready to eat vegetable yogurt recited by applicant's claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. Applicant's claims 1 – 18 delineate that the vegetables, plain yogurt, and natural additives are blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt recited by applicant's claims 1 – 18 is stored at refrigeration temperatures, wherein the cooked pureed vegetables remain unfermented, and is readily consumed without further preparation. Clearly, the ready to eat vegetable yogurt defined by applicant's claims 1-18 is not disclosed nor suggested by the 'Tide-Me-Over Reference which merely discloses a vegetable chip food product.

These structural and procedural distinctions provide ample basis upon which to predicate patentability of applicant's claims 1 – 18 over the 'Tide-Me-Over Reference disclosure.

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

14. Reference found at <http://recipes.chef2chef.net/recipe-archive/52/276005.shtml> by

Chef2Chef

Web-literature to Chef2Chef entitled “Vegetables In Yogurt Sauce” found at <http://recipes.chef2chef.net/recipe-archive/52/276005.shtml> (hereinafter the “Sauce Reference”) discloses a recipe comprising the preparation of cooked vegetables. These vegetables include zucchini, yellow squash, carrots, and green onions, basking in a sauce comprising various herbs. The recipe further calls for vegetable broth, sour cream, cornstarch and plain yogurt.

The ‘Sauce Reference calls for cooking the vegetables in oil, and does not call for the cooking of vegetables by way of steam, boiling, or blanching of the vegetables. The ‘Sauce Reference provides a recipe that requires the addition of herbs to be continued until the desired taste is reached. The ‘Sauce Reference also discloses that equal parts yogurt and sour cream are to be used.

On the other hand, the ready to eat vegetable yogurt and process defined by applicant’s claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. In accordance with applicant’s claims 1 – 18, the vegetables, plain yogurt, and natural additives are blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt delineated by applicant’s claims 1 – 18 is readily made with the minimum of culinary tools, and can be consumed alone as a meal or healthy snack.

In light of these structural and procedural differences, the invention recited by applicant’s claims 1 – 18 and the ‘Sauce Reference disclosure are patentably distinct.

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

15. Reference found at <http://www.sweetbabymedia.com/recipes/allbynumber4/017415.shtml> by

Jennifer Caher

Web-literature on Sweet Baby Media entitled “Stamp For Fun: Curried Croquets” by Jennifer Caher found at <http://www.sweetbabymedia.com/recipes/allbynumber4/017415.shtml> (hereinafter the “Croquets Reference”) discloses a recipe for a sausage shaped appetizer. The sausage shaped appetizer disclosed by the ‘Croquets Reference is comprised of cooked beans, chopped onion, curry, lemon and salt and pepper. The recipe sets forth that the appetizer may be served with salad, rice, vegetables, and soy yogurt mixed with fresh chopped mint and/ or chopped chilies. The ‘Croquets Reference does not disclose that vegetables are to be homogeneously mixed with a yogurt. Instead, the reference indicates that the vegetables should act as a side to the yogurt. The recipe also discloses that herbs are to be added to the sauce until the desired taste is reached.

Significantly, the vegetable yogurt and process thereof defined by applicant’s claims 1 – 18 calls for the homogeneous mixing of cooked pureed vegetables with plain yogurt. The ready to eat vegetable yogurt and process defined by applicant’s claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. Applicant’s claims 1 – 18 require that the vegetables, plain yogurt, and natural additives be blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt delineated by applicant’s claims 1 – 18 is readily made with the minimum of culinary tools, and can be consumed alone as a meal or healthy snack

These structural and procedural distinctions provide ample basis upon which to predicate patentability of applicant’s claims 1 – 18 over the ‘Croquets Reference disclosure.

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

16. Reference found at <http://dailyveg.com/other/childhood.php> by Reed Mangels et al.

Web-literature on Dailyveg entitled “Nutrition in Childhood” found at <http://dailyveg.com/other/childhood.php> by Reed Mangels and Katie Kavanagh-Prochaska (hereinafter the “Dailyveg Reference”) discusses the food diets of vegan children. Specifically, the ‘Dailyveg Reference describes various nutrients needed and sources in which they can be found. The article suggests some special tips for feeding preschoolers by cutting vegetables into different shapes and hiding small pieces of soft fruit in soy yogurt. It also suggests chopping or puréeing vegetables and adding them to pasta sauce or soup. The article concludes with sample meal plans for vegan children from infancy to childhood.

Significantly, the ‘Dailyveg Reference does not disclose a vegetable yogurt derived from soy or from milk protein. In addition, there is no disclosure in the ‘Dailyveg Reference concerning a process for producing a vegetable yogurt food product. The reference merely discusses vegetables in the sense of chopping vegetables into various shapes or puréeing vegetables and adding them to sauces or soups. It does not disclose a vegetable yogurt product, the only reference to yogurt (soy) deals with eating the yogurt plain or by hiding fruit pieces in the yogurt. The addition of puréed vegetables to soups and sauces is distinct from the addition of puréed vegetables to yogurt.

The vegetable yogurt and process thereof defined by applicant’s claims 1 – 18 calls for the homogeneous mixing of cooked puréed vegetables with plain yogurt. The ready to eat vegetable yogurt and process defined by applicant’s claims 1 – 18 comprises cooked pureed vegetables, plain yogurt, and natural additives to enhance flavor and taste. Applicant’s claims 1 – 18 call for the

In re application of: Marina Shereshevsky

Serial No.: 10/820,488

Filed: April 8, 2004

For: READY TO EAT FOOD FORMULATION CONTAINING  
YOGURT AND PUREED COOKED VEGETABLES AND  
PROCESS FOR MANUFACTURE THEREOF

Atty. Docket No.: 0162-1

vegetables, plain yogurt, and natural additives to be blended to form a homogeneous, uniform mixture of ready to eat vegetable yogurt. The ready to eat vegetable yogurt delineated by applicant's claims 1 – 18 is readily made with the minimum of culinary tools, and can be consumed alone as a meal or healthy snack

The 'Dailyveg Reference disclosure thus differs from the invention delineated by applicant's claims 1 – 18 in both product and process terms.

When compared to any product or process disclosed by the 'Dailyveg Reference, the presence of substantial product and process differences make the invention recited by claims 1 – 18 patentably distinct.

Respectfully submitted,  
Marina Shereshevsky



By \_\_\_\_\_  
Ernest D. Buff  
(Her Attorney)  
Reg. No. 25,833  
(908) 201-0220

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Atty. Docket No.: 0162-1

Bedminster, NJ 07921  
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*Attorney of Record*

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